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IN THE

Supreme Court of the United States

October Term, 1957

No. 728

SATURN OIL & GAS COMPANY, INC., *Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

WITH APPENDIX

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IN THE

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No.

SATURN OIL & GAS COMPANY, INC., *Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner, Saturn Oil & Gas Company, Inc. ("Saturn"), prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Tenth Circuit in the above-entitled cause.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (App., *infra,* at p. 1a) is not yet reported. The decision of the Presiding Examiner, the order of the Federal Power Commission affirming the decision, and the concurring opinion of Commissioner Digby are contained in the record (Rec. 116-122, 126-127, 112-114) and are reprinted in the Appendix. (App. 17a, 25a, 26a).

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on November 20, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 15 U.S.C. 717(r) (Section 19(b) of the Natural Gas Act of 1938, as amended).

QUESTIONS PRESENTED

1. Is an independent natural gas producer which sells all of its gas at the wellhead, before gathering has commenced, to a purchaser which gathers such gas, and after commingling it with other gas, transports a majority of it across state lines, a natural gas company within the definition of the Natural Gas Act?

2. Is such an independent natural gas producer, or its wellhead sales or production facilities, subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act?

STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act of 1938, as amended, (52 Stat. 821, as amended, 15 U.S.C. 717 *et seq.*) are set forth in the Appendix, *infra,* at p. 28a.

STATEMENT OF THE CASE

There are no disputed facts. The facts pertinent to the questions here presented were adequately summarized in the opinion of the Court below.

Saturn, a Kansas corporation (Rec. 118, 135), is a small, unintegrated company which owns gas-producing properties in the Hugoton Field in Kansas (Rec. 118, 136). Sales from forty wells in which Saturn has

an interest are the subject of this proceeding. Five of the wells are owned in entirety by Saturn, and it has varying interests in the remaining thirty-five. (Rec. 136-137).

At the wells, Saturn owns the primary production facilities which consist of the necessary well equipment before the wellhead is reached and at the wellhead, including casings, the cement in which the casings are anchored, tubings, pipe fittings and Christmas trees.[1] Saturn owns no pipelines, no lead-off pipes between the wellhead and the gathering facilities of the purchasers, no processing or manufacturing plants, nor other gas facilities of any kind. (Rec. 118, 136, 139, 143.)

All sales are made at the wellhead to either Panhandle Eastern Pipe Line Company or Northern Natural Gas Company, both of which companies are incorporated under the laws of Delaware. (Rec. 138). Such sales are made pursuant to long-term contracts (Rec. 18 *et seq.*) negotiated at arm's length over an extended period of time. Saturn does not have, and has never had, any affiliation or connection with either company. (Rec. 118, 138).

The meters at the wellheads, which are owned by the purchasers of the gas, are in some cases attached directly to the Christmas trees and in other cases are connected to the Christmas trees by lines of a few inches in length owned by Saturn. There are valves

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[1] The Court below cited the definition of "Christmas tree" set forth in the 1957 edition of *Oil and Gas Terms* by Williams and Meyers, as follows: "(T)he assembly of valves, pipes and fittings used to control the flow of oil and gas from the casinghead." (App. 9a).

required by Kansas conservation law by which the flow of gas may be cut off, which are operated by the purchasing companies. The purchasing companies maintain and operate the properties, billing Saturn for out-of-pocket expenses. (Rec. 118, 136, 143-146).

The gas sold by Saturn to Panhandle and Northern enters the gathering lines of the respective purchasers, is commingled with other gas acquired by the purchasers in the Hugoton Field, and a substantial majority of such commingled gas is ultimately transported in the purchasers' pipelines to outlets in other states. (Rec. 118, 139).

Under date of February 18, 1949, the Kansas State Corporation Commission issued an Interim Order effective March 1, 1949 establishing a minimum wellhead price for natural gas taken from the Hugoton Field of eight cents (8¢) per M.c.f. (Rec. 92). By an Order dated December 2, 1953, effective January 1, 1954, the Commission increased the minimum wellhead price to eleven cents (11¢) per M.c.f. (Rec. 90-96). This is the price currently being paid to Saturn for gas taken from its wells.

Saturn does not now serve, and at no time has served, any community either at wholesale or retail, or any main line industrial customer. It does not now hold itself out, and has not ever held itself out, as being willing to serve the public generally. (Rec. 137). No predecessor, subsidiary or affiliate of Saturn was engaged in the transportation or sale of natural gas in interstate commerce on June 7, 1954, or thereafter. (Rec. 136).

From the passage of the Natural Gas Act until after the decision of this Court in *Phillips Petroleum*

Company v. *State of Wisconsin*, 347 U.S. 672 (1954), the Federal Power Commission did not claim nor exercise jurisdiction over independent natural gas producers who sell at the wellhead. In the aftermath of this Court's decision in *Phillips*, the Commission issued its "174" series of orders, purportedly based on *Phillips*, which by their terms asserted jurisdiction not only over integrated companies like Phillips, which sell after the production and gathering of gas have been completed, but also over unintegrated producers like Saturn, which sell only at the wellhead before gathering has even commenced.[2]

Saturn made the two filings required by such orders,[3] under protest, and included therein all such information as the orders purported to require, but it asserted therein, and has consistently asserted since, that it is not a natural gas company within the definition of the Act, and that neither it nor its wellhead sales nor production facilities are subject to the jurisdiction of the Commission. The Commission treated the latter of Saturn's filings as an application for a certificate of public convenience and necessity, and scheduled a hearing thereon. Saturn appeared and moved to dis-

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[2] Order 174 was promulgated July 16, 1954, amended by Order 174-A, issued August 6, 1954, modified in part by Order adopted September 24, 1954 (subsequently revised by Order 174-B, adopted December 16, 1954, and reprinted in 18 C.F.R., Parts 154 and 157).

[3] On November 26, 1954, Saturn filed two documents, one denominated "Saturn Oil & Gas Comany, Inc., Compliance with Federal Power Commission Order 174-A In So Far As Said Order Relates to the Filing of Rate Schedules", and the other denominated "Saturn Oil & Gas Company, Inc., Compliance with Federal Power Commission Order 174-A In So Far As Said Order Relates to Certificates of Public Convenience and Necessity." (Rec. 7 *et seq.*)

miss for lack of jurisdiction. (Rec. 97). Following subsequent notice and hearing, the Presiding Examiner ruled adversely to Saturn on the jurisdictional question. (Rec. 116-122, App. 17a). After Saturn filed its exceptions and a brief in support thereof (Rec. 124), the Commission, by order issued November 9, 1956, affirmed the Presiding Examiner's decision. (Rec. 126-127, App. 25a). After Saturn's petition for rehearing by the Commission was denied (Rec. 127, 131), it petitioned the Tenth Circuit for review of the Commission's order pursuant to Section 19(b) of the Natural Gas Act. (Rec. 1).

REASONS FOR GRANTING WRIT

I. THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

This case, which is one of the several cases now pending in this Court that raise questions concerning the jurisdiction of the Federal Power Commission over the production and gathering of natural gas, is the only case which squarely and necessarily presents the question whether the Federal Power Commission, under the Natural Gas Act, has jurisdiction over sales of gas at the wellhead.[4] This question is of primary importance to the producing states and to the thousands of producers and royalty owners whose gas is sold at the wellhead. It is also of immediate importance to the Federal Power Commission, whose administrative and legal processes have been sorely taxed by the Commission's assertion of jurisdiction over such sales.

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[4] The Court below found that the "exact factual situation involved here has not as yet been passed on by the United States Supreme Court or by any court of appeals." (App. 6a).

Previous decisions of this Court have determined that the Federal Power Commission has jurisdiction over sales of gas *after* the end of production and gathering. *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U.S. 683 (1947); *Phillips Petroleum Company* v. *State of Wisconsin*, 347 U.S. 672 (1954); and *Natural Gas Pipeline Company* v. *Panoma Corporation*, 349 U.S. 44 (1955). See Part II of this Petition, *infra*. In no previously decided case has this Court been concerned with the jurisdiction of the Commission over wellhead sales.

In four recent cases, the United States Court of Appeals for the Fifth Circuit held subject to the jurisdiction of the Federal Power Commission sales of gas, substantially all of which were made after at least some movement from the wellhead to separators or freewater knockouts and the passage of the gas through such processing equipment. *Deep South Oil Co. of Texas* v. *Federal Power Commission*, 247 F. 2d 882 (C.A. 5, 1957); *Shell Oil Co.* v. *Federal Power Commission*, 247 F. 2d 900 (C.A. 5, 1957); *Humble Oil & Refining Co.* v. *Federal Power Commission*, 247 F. 2d 903 (C.A. 5, 1957); *Continental Oil Co.* v. *Federal Power Commission*, 247 F. 2d 904 (C.A. 5, 1957). Petitions for *certiorari* are now pending in *Humble* and *Shell*, *supra*.

In *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, No. 85 (October Term, 1957), now pending in this Court on appeal from the Supreme Court of Kansas, questions are raised concerning the validity of the minimum price orders of the Kansas Corporation Commission, as applied to wellhead sales of gas ultimately transported in interstate

commerce. In its *Amicus* Brief filed in *Cities Service*, the Federal Power Commission asserts that it has exclusive jurisdiction over such sales, and that the Kansas orders are thus invalid as applied to such sales. Hence, the Commission contends that the decision of the Supreme Court of Kansas in *Cities Service* is directly in conflict with the decision of the Court below in this proceeding. If the Federal Power Commission's assertions of its jurisdiction are correct, the conflict is evident. See Part III of this Petition, *infra*.

The questions here presented are of primary importance in the field of federal-state relations. Their resolution is imperative if effective regulation by the states of the production and gathering of natural gas in the interests of conservation is to be maintained. Intelligent conservation is a long-range process, not subject to frequent and easy adjustment.

Heretofore the states have understood that they had "full freedom in these matters." *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U.S. 682, 690 (1947). This court has also noted that "the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas," even before passage of the Natural Gas Act. *Federal Power Commission* v. *Panhandle Eastern Pipeline Company*, 337 U.S. 498, 512-513 (1949). The State commissions, pursuant to that delegation of power, have promulgated numerous regulations controlling various aspects of producing natural gas, including spacing, ratable taking, secondary recovery requirements and minimum pricing. The doubts and shadows

cast by the Commission's assertion of jurisdiction over wellhead sales have, in themselves, interfered with the states' intelligent conservation of their resources.

Nor is it only the states who require the guidance which would flow from this Court's determination of the questions here presented. Although Saturn speaks only for itself in this proceeding, it is obvious that the thousands of producers and royalty owners whose gas is sold at the wellhead have an equal stake in this proceeding. Many of them have only a handful of wells at most, and can ill afford compliance with the conflicting claims of the federal and state authorities.[5]

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[5] Respondent's Chairman Kuykendall, in testimony within the past year to the House Committee on Interstate and Foreign Commerce, described one of the problems of complying with federal regulation thus:

> ". . . there have been numerous little producers who tried to get a certificate of convenience and necessity from us so he would sell his gas, and he needed the revenues from that sale very badly. He would not know how to apply for that certificate, and perhaps did not know until he was ready to make the sale that he needed that certificate. He would then start applying. He would not give us the information that was required. So then he would write, perhaps, to his Congressman and try to get him to help, and we had all these great volumes of cases, including many others similarly situated, and it was just unavoidable that a lot of those were delayed a considerable time before they were squared away and could lawfully sell that natural gas, even though the amount might be very small.
>
> "That is one of the very detrimental things that has happened, and I see no reason at all why a producer of natural gas should be required to obtain a certificate of public convenience and necessity to make such a sale."

Hearings on H.R. 6790 and H.R. 6791 before the Committee on Interstate and Foreign Commerce, House of Representatives, 85th Cong., 1st Sess., Part I, Page 107.

Finally, authoritative determination of the questions here presented should be important to the Federal Power Commission, as well as to the states, the Petitioner and other producers. From the time of the decision in *Phillips* to November 1, 1957, the Commission received 8,936 certificate filings and 24,537 rate filings from "independent producers." App. A to FPC *Amicus* Brief in *Cities Service*. The Commission admits that ". . . it does not appear likely that the producer cases or even the rest of the natural gas work can be placed on a current basis for several years to come" and properly concludes:

> "Such an administrative situation is not conducive to the maintenance of a healthy industry in the interest of both consumers and natural gas companies."[6]

The Court below recognized the administrative implications of its decision as follows:

> "If all sales of natural gas which are made before production and gathering have ended and which are for interstate transportation for resale are within the Act, numerous problems are presented. For example, must every royalty holder or working-interest owner who has the right to take gas in kind and who sells at the wellhead to an interstate pipeline company obtain a certificate of convenience and necessity and file a rate schedule? If this is necessary, the Federal Power Commission is faced with a tremendous administrative task." (App. 13a).

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[6] Report of the Federal Power Commission on H.R. 6790, 85th Congress, dated May 1, 1957, reprinted as Appendix I, Report No. 837 on Natural Gas Act Amendments of 1957, dated July 19, 1957, pages 27, 28. See additional statistics there set forth.

The burden of the Commission is legal as well as administrative; the Commission's reading of the *Phillips* case has resulted in a flood of litigation draining the resources of Commission and courts alike. Thus, the Commission has recently said:

> "Not only has the application of present provisions of the Natural Gas Act to independent producers brought about an unprecedented workload upon the Commission from the standpoint of available personnel and funds required for routing [sic] administration, but over half of the court litigation involving review of the Commission's orders currently relates to legal questions growing out of the regulation of independent producers under the present Act."[7]

For example, as recently as December 20, 1957, a petition for review was filed in the United States Court of Appeals for the Fifth Circuit challenging Commission jurisdiction over sales "at a point in the 'Christmas tree' immediately above the second master valve on the well casing." *Continental Oil Company* v. *Federal Power Commission,* Docket No. 17,016 (C.A. 5), FPC Press Release No. 9604 (December 27, 1957).

Of course, the burden—administrative and legal—must be carried if the Congress, in fact, intended to and did provide for regulation of wellhead sales. The situation does, however, suggest that the question of whether Congress so intended (a question which Respondent itself resolved in the negative for the first sixteen years of the Natural Gas Act's operation) deserves this Court's consideration before Respondent attempts to carry its burden much further—at great

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[7] Report of the Federal Power Commission on H.R. 6790, 85th Cong., dated May 1, 1957, page 28, *op. cit.*, supra, at n. 6, p. 10.

cost to regulator and regulated alike. That question is squarely presented in this case.

II. THE DECISION OF THE COURT BELOW CONTRAVENES THE JURISDICTIONAL LINE IN *PHILLIPS* AND RELATED DECISIONS OF THIS COURT.

In the *Interstate, Phillips* and *Panoma* cases this Court held that sales of natural gas *after* completion of production and gathering are subject to the provisions of the Natural Gas Act. Cf. *Michigan-Wisconsin Pipe Line Co.* v. *Calvert,* 347 U.S. 157 (1954). In *Interstate* this Court enunciated the principles which have been given application in subsequent cases.

There the Court delineated the areas in which the jurisdiction of the Federal Power Commission does *not* attach, as well as the areas in which it does attach. "Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach." 331 U.S. at 690. Patently, a wellhead sale is made during the course of production and gathering, and no sale could be more closely connected with the local incidents of that process.

In the *Phillips* case, this Court, speaking in the context of sales *after* the end of production and gathering said:

> ". . . we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by

> a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." 347 U.S. at 682.

And again:

> "... we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems." 347 U.S. at 687.

The Court below concluded that it was bound by the quoted language. On the basis of this language, it decided that Saturn's sales at the wellhead are subject to the jurisdiction of the Federal Power Commission.

The error of the Court below arises from its misconstruction of this Court's use of the term "wholesales of natural gas in interstate commerce." In both the *Interstate* and *Phillips* cases this Court was concerned with sales of gas in quantity after the completion of gathering from multiple wells. While both Interstate and Phillips produced portions of the gas sold to interstate pipelines, both also purchased large quantities of such gas from other producers or gatherers.

It was long ago recognized that individual wellhead sales are not wholesales of natural gas in interstate commerce within the purview of the Natural Gas Act. In *Interstate Natural Gas Co.* v. *Federal Power Commission,* 156 F. 2d 949 (C.A. 5, 1946), affirmed by this Court, the United States Court of Appeals for the Fifth Circuit made the distinction explicit. Judge Hutcheson, speaking for the Court, said:

> "... The purpose of the Natural Gas Act, as shown in the Senate and House Committee reports, which are identical, was to provide for the regulation of natural gas companies transporting

> and selling natural gas in interstate commerce. Its proponents were not interested in the production of gas or the individual sales of gas at the well. Nor were they interested in the gathering of the gas in the field. What they were interested in, as the report in terms states, what they were trying to reach, was wholesale sales of gas." 156 F. 2d at 952.

In *State of Wisconsin* v. *Federal Power Commission,* 205 F. 2d 706 (C.A. D.C., 1953), affirmed by this Court in *Phillips,* the United States Court of Appeals for the District of Columbia Circuit drew a similar distinction. Judge Edgerton, speaking in the light of *Interstate,* said:

> "Since Phillips' sales are made after the gas has been gathered into trunk lines Cities Service Gas Co. v. Peerless Oil & Gas Co., 1950, 340 U.S. 179, 71 S. Ct. 215, 95 L. Ed. 190, is irrelevant. That case upholds a state's power, in aid of conservation, to fix minimum prices for natural gas sold at the wellhead for interstate movement. Such sales are obviously made during the 'production and gathering' which Congress reserved to state control, and it 'is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce.' 340 U.S. at page 186, 71 S. Ct. at page 219. . . ." 205 F. 2d at 710, n. 9.

Nowhere did this Court express disapproval of the distinctions drawn by the Fifth Circuit and the District of Columbia Circuit. Indeed, this Court has recognized that, aside from the intent of the Congress to refrain from an invasion of the conservation powers of the states, the regulation of wellhead sales of gas, as distinguished from wholesales in interstate com-

merce after production and gathering, has little, if any, relevance to the primary purpose of the Natural Gas Act, *i.e.*, the protection of the consumers. ". . . The wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price." *Cities Service Gas Company* v. *Peerless Oil & Gas Company,* 340 U.S. 179, 187 (1950). But unreasonable charges exacted after the end of production and gathering "become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of the gas, including the ultimate consumer." *Interstate Natural Gas Company* v. *Federal Power Commission,* 331 U.S. 682, 693 (1947).

Thus, the decision of the Court below contravenes the jurisdictional line in the *Phillips* case and the related decisions of this Court.

III. WHETHER THE DECISION OF THE COURT BELOW IS EITHER IN CONFLICT WITH, OR COMPLEMENTARY TO, THE DECISION OF THE KANSAS SUPREME COURT IN THE *CITIES SERVICE* CASE. REVIEW BY THIS COURT IN *SATURN* IS NECESSARY FOR DETERMINATION OF THE JURISDICTION OF THE FEDERAL POWER COMMISSION OVER WELLHEAD SALES BY INDEPENDENT PRODUCERS.

In its brief filed in this Court as *amicus curiae* in *Cities Service Gas Company* v. *State Corporation Commission of Kansas,* No. 85 (October Term, 1957), the Federal Power Commission has asserted that the decision of the Kansas Supreme Court in that case "is squarely in conflict with" the decision of the Tenth Circuit in *Saturn*. *FPC Amicus Brief,* p. 17. On the other hand, the Kansas Corporation Commission asserts that its order in *Cities Service* is one "regulating severance or production only," and that whether sales of gas at the wellhead are subject to regulation by the

Federal Power Commission is not a question at issue in that case. *Reply Brief*, p. 18. However, the Kansas Commission also asserts that if Federal Power Commisison action should become "inconsistent or a substantial interference with" the state's "regulatory functions," the jurisdiction of the latter Commission would not attach. *Reply Brief*, p. 20.

If the position of the Federal Power Commission is correct, the principle which controls *Cities Service* will also control *Saturn*. But no independent producer is a party to *Cities Service*, and the interest and position of the Kansas Commission is not the same as that of Saturn. Hence, it is essential that Saturn be heard before the controlling principle is made explicit by this Court.

If, on the contrary, the Kansas Commission is correct in its position, the question raised in *Saturn* will not be reached in *Cities Service*. Thus, the present confusion concerning the status of wellhead sales created by the Federal Power Commission's "174" orders will remain until the case of an independent producer such as Saturn is decided by this Court.

Therefore, on the basis of either alternative, review by this Court in *Saturn* is necessary for the full consideration and determination of the status of wellhead sales of natural gas by independent producers.

CONCLUSION

For the foregoing reasons, Saturn Oil & Gas Company, Inc., prays that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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January 16, 1958

Certificate of Service

I certify that the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit was served upon Respondent, the Federal Power Commission, by mailing a copy thereof by United States mail, postage prepaid, to each of the following attorneys for Respondent on the 16th day of January, 1958:

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APPENDIX

Opinion in Saturn Oil & Gas Company, Inc. v. Federal Power Commission

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

ON PETITION TO REVIEW ORDERS OF THE FEDERAL POWER COMMISSION

No. 5582—NOVEMBER TERM, 1957

SATURN OIL & GAS COMPANY, INC.,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

(November 20, 1957)

William H. Chamberlain and Chisman Hanes (Gerald G. Schulsinger, and Klagsbrunn, Hanes & Irwin were with them on the brief) for Petitioner.

Willard W. Gatchell (Robert L. Russell was with him on the brief) for Respondent.

A brief of *amici curiae* urging reversal was filed by Charles R. Nesbitt, W. A. Delaney, Jack M. Campbell, George W. Anderson, Jr., and John Davenport on behalf of Texas Independent Producers and Royalty Owners Association of Austin, Texas; East Texas Oil Association, Tyler, Texas; Independent Producers and Royalty Owners Association of New Mexico, Roswell, New Mexico; Kansas

Independent Oil and Gas Association, Wichita, Kansas; Louisiana Independent Producers and Royalty Owners Association, Baton Rouge, Louisiana; North Texas Oil and Gas Association, Wichita Falls, Texas; Oklahoma Independent Petroleum Association, Oklahoma City, Oklahoma; West Central Texas Oil and Gas Association, Abilene, Texas; and Panhandle Producers and Royalty Owners Association, Amarillo, Texas.

Before BRATTON, Chief Judge, and HUXMAN and BREITENSTEIN, Circuit Judges.

BREITENSTEIN, Circuit Judge.

Saturn Oil & Gas Company,[1] by its petition, seeks a review, pursuant to section 19(b) of the Natural Gas Act,[2] of orders of the Federal Power Commission[3] which found that sales of natural gas by Saturn are sales in interstate commerce for resale and by reason thereof Saturn is a "natural-gas company" within the meaning of the Natural Gas Act. Saturn contends that it is not subject to the Act.

Saturn is a small unintegrated oil company which owns and operates natural-gas properties only in the State of Kansas. Saturn's production is from forty-five wells, forty of which are the subject of this proceeding. All of these wells are located in the Hugoton Field in the State of Kansas. In these wells Saturn has varying interests. The gas is sold under long-term contracts to Panhandle Eastern Pipe Line Company[4] and to Northern Natural Gas Company.[5] Saturn has no affiliation or connection with either of these companies. Saturn does not now and never

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[1] Hereinafter referred to as Saturn.

[2] 15 U. S. C. § 717r(b). The Natural Gas Act is found at 52 Stat. 821-833, 15 U. S. C. §§ 717-717w.

[3] Hereinafter referred to as Commission.

[4] Hereinafter referred to as Panhandle.

[5] Hereinafter referred to as Northern.

has served any community or any main line industrial consumer at wholesale or retail. It does not now and never has held itself out as being willing to serve the public generally.

The gas sales by Saturn are unusual in that the product is a very dry gas requiring neither processing nor dehydration to make it ready for transportation and consumption and in that the sales are at the wellhead.

Of the forty wells involved, thirty-four are owned jointly by Saturn and Panhandle and one well is owned by the same parties and by a third interest. These thirty-five wells are operated by Panhandle under an operating agreement which designates Panhandle as the operating manager with authority to purchase for itself or to sell to others the gas produced. There is a further agreement with Panhandle relating to the purchase of the gas. In the joint operating agreement the point of delivery is "at the mouth of the several jointly owned wells." In the Panhandle purchase contract the delivery point is "at the wells."

Gas from the remaining five wells is sold by Saturn to Northern. The Northern purchase contract provides for delivery "at the points of connection of Northern's well-gathering pipe line with the side gate valves of Seller, installed on the wellhead of Seller's wells." It is clear that all the sales by Saturn to Panhandle and to Northern are sales at the wellhead.

The report of the examiner, affirmed by the Commission, states, with reference to the facilities of Saturn and the delivery of gas by Saturn, that:

> "Saturn owns no facilities beyond its 'Christmas tree' at each well, with the exception, in some instances, of a few inches of pipe between the 'Christmas tree' and the meter of the purchasing company. In the other instances the meters are attached to the 'Christmas tree.' All meters are owned by the pur-

chasers. As a part of Saturn's 'Christmas trees' at these wells there is a valve by means of which the flow of gas from the well and into the purchaser's meter may be controlled. These valves are operated by the purchasers of the gas. Saturn owns no pipelines, no processing or manufacturing plants, and no other type of natural-gas facilities than those used in the production of its gas and the delivery thereof at the wellhead to Panhandle and Northern."

Panhandle and Northern are each interstate pipeline companies. After the delivery of gas by Saturn at the wellhead, either to Panhandle or to Northern, it is commingled in the pipelines of the purchaser with other gas which has been obtained from other wells in the Hugoton Field. A "substantial majority" of this commingled gas is transported in the pipelines of these two purchasers beyond the boundaries of Kansas and into other states for resale.

The proceedings before the Commission which gave rise to this petition for review were initiated by Saturn. By proper and timely filings in compliance with Federal Power Commission Order No. 174-A, Saturn requested the Commission to find that it is not a natural-gas company within the meaning of the Natural Gas Act and was, therefore, entitled to continue its business without securing a certificate of public convenience and necessity. The examiner found that Saturn is a natural-gas company and that its sales of natural gas to Panhandle and Northern are subject to the jurisdiction of the Commission.[6] Saturn duly

[6] The examiner made the following findings and arrived at the following conclusions:

"(1) Saturn is an independent producer of natural gas engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and, by reason thereof, is a 'natural-gas company' within the meaning of the Natural Gas Act and subject to the jurisdiction of the Commission under the Act.

"(2) Saturn's sales of natural gas to Panhandle and Northern are made in interstate commerce, and together with the

excepted to the decision of the examiner but its exceptions were denied by the Commission which affirmed the decision of the examiner. A petition for rehearing filed by Saturn was denied and the matter was brought here on petition for review. By permission of the court the attorneys for various oil and gas associations have been permitted to file a joint brief as *amici curiae*.

The basic question presented is whether natural-gas sales at the wellhead by a small unintegrated company to an interstate pipeline company for resale for ultimate public consumption are controlled by the Natural Gas Act.

Section 1(b) of the Natural Gas Act[7] defines thus the area of applicability of the Act:

> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribu-

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operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

"(3) Saturn is able and willing properly to do the acts and to perform the service for which a certificate is applied for by it, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

"(4) The sale of natural gas by Saturn to Panhandle and Northern herein described, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned."

[7] 15 U. S. C. § 717(b).

tion or to the production or gathering of natural gas.'' Section 2(6)[8] states:

> '' 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.''

Saturn vigorously asserts that its wellhead sales are within the exemption contained in section 1(b) because they are made prior to gathering. This position is made clear by the following paraphrase of section 1(b):

> ''The provisions of this chapter * * * shall not apply * * * to the production or gathering of natural gas.''

Production of gas is the act of bringing forth gas from the earth. Gathering of gas is the act of collecting gas after it has been brought forth from the earth.[9] The Saturn sales are after the gas has been brought forth from the earth but they are prior to gathering in that the gas is sold before it is commingled with gas produced from any other source of supply and before it is processed, stored, or artificially pressurized.

The exact factual situation involved here has not as yet been passed on by the United States Supreme Court or by any court of appeals. In *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, the Commission found that the sales by Phillips ''are part of the production and gathering process, or are 'at least an exempt incident thereof.' '' [10]

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[8] 15 U. S. C. § 717a(6).

[9] These definitions are from the dissenting opinion of Justice Black in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, 518, but they are consistent with the meaning given these terms in the majority opinions in that case and in *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 597-604, and in *Interstate Gas Co.* v. *Federal Power Commission*, 331 U. S. 682, 689-691.

[10] 347 U. S. 677.

The court rejected this finding saying that "production and gathering, in the sense that those terms are used in § 1(b), end before the sales by Phillips occur."[11] The physical operations present in the gas sales by Phillips were described by the court as follows:[12]

> "The gas flows from the producing wells, in most instances at well pressure, through a network of converging pipelines of progressively larger size to one of twelve processing plants, where extractable products and impurities are removed. * * * After processing is completed, the gas flows from the processing plant through an outlet pipe, of varying lengths up to a few hundred feet, to a delivery point where the gas is sold and delivered to an interstate pipeline company. The gas then continues its flow through the interstate pipeline system until delivered in other states."

The Phillips decision thus involved a factual situation in which the sales were made after production and gathering.

In *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U. S. 44, the court in a short *per curiam* opinion said:

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, *after its production and gathering has ended,* by a company which transports the gas for resale in interstate commerce. We held in Phillips Petroleum Co. v. Wisconsin, 347 U. S. 672, that *such* a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one." (Emphasis supplied.)

The Fifth Circuit has recently considered four cases[13] wherein that court upheld the jurisdiction of the Commis-

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[11] 347 U. S. 678.

[12] 347 U. S. 675.

[13] *Deep South Oil Co. of Texas* v. *Federal Power Commission*, No. 15849; *Shell Oil Co.* v. *Federal Power Commission*, No. 15900; *Humble Oil & Refining Co.* v. *Federal Power Commission*, No. 15884; and *Continental Oil Co.* v. *Federal Power Commission*, No. 16130.

sion over natural-gas sales by producers to interstate pipeline companies. Those decisions are not reported as yet. Counsel have furnished us with a copy of the majority opinion and a copy of the dissenting opinion in one case, *Deep South Oil Co.* v. *Federal Power Commission.*[14] According to the copy of the opinion with which we have been supplied, Deep South is a small unintegrated corporation which produces gas from fourteen wells in the Big Hill Field of Texas and sells gas to the Texas Gas Corporation. In connection with such sale and delivery of gas the Fifth Circuit said:

> "Prior to delivery under the contract, the 'casing-head gas' is separated from the oil with which it is produced at a field separator, and the 'full stream gas' is treated for the removal of water at a so-called 'free-water knockout.' Within a few feet from the point at which the gas leaves the aforementioned mechanical devices, it passes into Texas Gas' meters which are located on the leases near the wellheads from which the gas is produced. There it is measured and delivered and title thereto passes to Texas Gas."

The Deep South opinion does not make it clear as to whether there is any collection or gathering of the gas before it passes through the "field separator" or the "free-water knockout." We are not informed as to the factual situation in the Shell, Humble and Continental decisions of the Fifth Circuit.

The *Phillips* and *Panoma* cases involve sales after production and gathering. The *Deep South* case involves sales after a horizontal movement of the gas from the wellhead to a processing plant. So far as Saturn is concerned, the testimony is that the facilities owned by Saturn end with

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[14] In two of the cases, *Shell Oil Co.* v. *Federal Power Commission* and *Humble Oil & Refining Co.* v. *Federal Power Commission,* applications for certiorari have been filed with the United States Supreme Court and at this date have not been ruled on. See Docket Nos. 449 and 459, October Term, 1957.

the several devices at the top of the well which are collectively known as the Christmas tree.[15] Delivery by Saturn is made into the meter which is owned and operated by the purchaser and connects with Saturn's meter valves which are a part of the Christmas tree and may be used to cut off delivery. The president of Saturn, testifying as to the point of connection, said that Saturn had no properties beyond the Christmas tree except a line of a few inches to the meter and that in some instances the meter was attached directly to the Christmas tree.

In determining the effect of the factual difference which exists as to Saturn, consideration must be given to the Phillips decision. The court there states that the primary aim of the Natural Gas Act was the "[p]rotection of consumers against exploitation at the hands of natural-gas companies."[16] In connection with the exemptions contained in section 1(b), the court quoted with approval its statement in *Interstate Natural Gas Co.* v. *Federal Power Commission, supra,* that "[e]xceptions to the primary grant of jurisdiction in the section [1(b)] are to be strictly construed."[17] The court then went on to say that it based its decisions in Interstate on the broad ground that "sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption."[18]

With reference to the intent of Congress the Court said in *Phillips* that:[19]

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[15] Howard R. Williams and Charles J. Meyers in their 1957 work "Oil and Gas Terms" define Christmas tree as "the assembly of valves, pipes and fittings used to control the flow of oil and gas from the casinghead."

[16] 347 U. S. 685.

[17] 347 U. S. 679 quotes 331 U. S. 690-691.

[18] 347 U. S. 680-681.

[19] 347 U. S. 682.

> "* * *, we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and *whether occurring before, during, or after transmission by an interstate pipeline company.*" (Emphasis supplied.)

With further reference to the congressional intent, the court said:[20]

> "* * * we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems."

In the *Phillips* case the court had before it the question of the jurisdiction of the Commission over sales of gas, after production and gathering had ended, in interstate commerce for resale. Rather than base its decision on the inapplicability of the production or gathering exemption, the court held that the Commission had jurisdiction over "all wholesales of natural gas in interstate commerce * * * whether occurring before, during, or after transmission by an interstate pipeline company."[21] In their concurring opinion on the adoption of the Federal Power Commission Order No. 174-B, Commissioners Smith and Stueck summarized thus the situation presented by the *Phillips* decision:[22]

> "Depending upon whether prime emphasis is attached to the precise facts presented in the case of Phillips or to the broad language used in the dictum of the Supreme Court's opinion, arguments can be made for either of the extremes of possible interpertations of that decision: that our jurisdiction is limited to the

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[20] 347 U. S. 683-684.

[21] 347 U. S. 682.

[22] 4 Oil and Gas Reporter 919, reporting decision of Federal Power Commission dated December 16, 1954, in Docket Nos. R-137 and R-138.

sale of natural gas at the tailgate of the processing plant, or the point where the natural gas enters the interstate pipe line, or, in the alternative, that our jurisdiction extends to every well-head sale in the field, or to the point of the first sale of natural gas for resale, wherever that may be, if interstate commerce turns out ultimately to be involved. Both interpretations have their advocates; both have been urged upon us."

Before stating our conclusions as to the effect of the *Phillips* decision certain other arguments of Saturn should be noted. One of these is that the *Phillips* decision is not a controlling precedent because it involved a large integrated company,[23] whereas Saturn is a small unintegrated company. This asserted distinction does not appeal to us. There is nothing in the Natural Gas Act which makes its applicability depend on the size or the integration of the gas operator. The *Phillips* decision holds that the Act applies to all wholesales by producers. Saturn may not escape regulation because of its size or because of the restricted nature of its operations.

Saturn further urges that the extension of the jurisdiction of the Commission to wellhead sales destroys the power of the states to exercise their constitutional power over the conservation of natural resources, a power which has been traditionally used to regulate the production and gathering of natural gas. Specifically, Saturn points out that Kansas, in the proper exercise of this power, has fixed a minimum wellhead price for natural gas produced from the Hugoton Field, the field involved in the Saturn operations now before the court. This minimum price

[23] An integrated oil company has been defined as a company engaged in all phases of the oil industry, from exploration for oil deposits to retail sale of oil products (including gasoline). These phases in outline are: exploration, production, transportation, manufacturing and refining, and retailing. See Oil and Gas Terms, *supra*, p. 128.

order has been upheld by the Kansas Supreme Court.[24] Most obviously there cannot be a dual control of wellhead sales by the State Corporation Commission of Kansas and by the Federal Power Commission. At the same time it may well be observed that a minimum wellhead price is an effective conservation control measure. Similar state action has been upheld in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190. But as observed in the *Panoma* decision,[25] those cases dealt with constitutional questions and not with the construction of the Natural Gas Act.

The conflict between federal and state authority is recognized in *Interstate Natural Gas Co.* v. *Federal Power Commission* wherein the court said:[26]

> "Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach. But such conflict must be clearly shown. Exceptions to the primary grant of jurisdiction in the section are to be strictly construed. It is not sufficient to defeat the Commission's jurisdiction over sales for resale in interstate commerce to assert that in the

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[24] See *Cities Service Gas Co.* v. *State Corporation Commission*, 180 Kan. 454, 304 P. 2d 528. This decision has been appealed to the United States Supreme Court and probable jurisdiction noted, 353 U. S. 971.

[25] 349 U. S. 45.

[26] 331 U. S. 690-691.

> exercise of the power of rate regulation in such cases, local interest may in some degree be affected."

This would seem to dispose of the point. The jurisdiction of the Commission is not defeated by state regulatory action.

Saturn uses the above quotation from Interstate as the basis for the contention that the Act was never intended to apply to wellhead sales because such sales are made during production and gathering and are only technically consummated in interstate commerce. In this regard Saturn paints a sorry picture of the impact on the nation's economy of what it describes as a nationalization of the gas business. The brief of the *amici curiae* points out the hardships which will fall on the great group of independent gas producers if they are subjected to the drastic controls of the Natural Gas Act.[27] The argument, however, is not based on any constitutional ground. It goes merely to the wisdom of the Act. That is a question for Congress, not for the courts.

In the final analysis the question resolves itself into a determination of whether the *Phillips* decision is to be viewed in the light of its precise facts or in the light of the broad language of the court. We are convinced that the court with full recognition of the precise facts, which it detailed in its opinion, carefully refrained from basing its decision on the inapplicability of the exemption and held that the production or gathering exemption of section 1(b) did not apply to exclude from the jurisdiction of the

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[27] If all sales of natural gas which are made before production and gathering have ended and which are for interstate transportation for resale are within the Act, numerous problems are presented. For example, must every royalty holder or working-interest owner who has the right to take gas in kind and who sells at the wellhead to an interstate pipeline company obtain a certificate of convenience and necessity and file a rate schedule? If this is necessary, the Federal Power Commission is faced with a tremendous administrative task.

Commission sales by any producer of natural gas for transportation interstate for resale to the public. We are bound by the *Phillips* decision.

Saturn says that this amounts to a nullification of the production or gathering exemption. We do not agree. In *Colorado Interstate Gas Co.* v. *Federal Power Commission* the court, in dealing with the contention that its disposition of the case gave no meaning to the production or gathering exemption of section 1(b), said: [28]

> "Certainly that provision precludes the commission from any control over the activity of producing or gathering natural gas. For example, it makes plain that the Commission has no control over the drilling and spacing of wells and the like. It may put other limitations on the Commission."

In *Interstate Natural Gas Co.* v. *Federal Power Commission* [29] and *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.* [30] the court recognized that effect must be given the production or gathering exemption. These cases and *Colorado Interstate Gas Co.* v. *Federal Power Commission* [31] are referred to in the *Phillips* decision as holding that the production or gathering exemption applies to the physical activities, facilities, and properties used in the production and gathering of natural gas and not to the business of production and gathering.[32] Until there is a sale of the natural gas produced by such operations and installations in interstate commerce for resale, they are exempt. In the event of such a sale the jurisdiction of the Commission applies but only because of the sale and only to the extent that the Natural Gas Act confers jurisdiction.

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[28] 324 U. S. 602-603.

[29] 331 U. S. 690.

[30] 337 U. S. 504-505.

[31] 324 U. S. 581.

[32] 347 U. S. 678, 681.

This brings us to the final contentions of Saturn. The decision of the examiner, affirmed by the Commission, provides:

> "A certificate of public convenience and necessity is hereby issued to Saturn Oil & Gas Company, Inc., upon the terms and conditions of this order, authorizing the sale by it to Panhandle Eastern Pipe Line Company and Northern Natural Gas Company of natural gas in interstate commerce for resale, *together with the continued operation of any facilities necessary therefor and subject to the jurisdiction of the Commission*, all as more fully described in the record of this proceeding and the findings heretofore made." (Emphasis supplied.)

Saturn says that the effort to certify production facilities violates the production or gathering exemption. To us it is clear that facilities necessary to effect a sale of gas in interstate commerce are facilities used in interstate commerce and are within the jurisdiction of the Commission. This would seem to be the plain intent of section 7(c).[33] The Third Circuit has so held in *J. M. Huber Corp.* v. *Federal Power Commission*, 236 F. 2d 550, 556.

The failure to identify the facilities is said to contravene the Fifth Amendment in that the definitive standards required by due process are absent. The record does not disclose any controversy as to whether any particular facility is within or without the jurisdiction of the Commission. Certainly Saturn is not injured when all the facilities necessary for its sales to Panhandle or Northern are certificated. The act of sale in interstate commerce for resale commits the facilities necessary to effectuate such a sale to regulation by the Commission to the extent of its jurisdiction. The test is whether the continued operation of a facility is necessary to the delivery of the gas sold. The generality of the certificate favors Saturn. The standard is ascertainable. It follows that there is no denial of due process.

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[33] 15 U. S. C. 717f(c).

Much of the argument by Saturn and by the *amici curiae* goes to the allegedly disastrous effect on the oil and gas business and on the national economy which will result from an affirmance of the Commission's order. This argument should be directed to Congress and not to the courts.

The petition for review is denied.

Judgment in Court Below

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

No. 5582

SATURN OIL & GAS COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

Judgment

"Seventh Day, November Term, Wednesday, November 20th, 1957.

"Before Honorable Sam G. Bratton, Chief Judge, and Honorable Walter A. Huxman and Honorable Jean S. Breitenstein, Circuit Judges.

"This cause came on to be heard on the transcript of the record from the Federal Power Commission and was argued by counsel.

"On consideration whereof, it is ordered and adjudged by this court that the petition to review be and the same is hereby denied."

Decision of Presiding Examiner

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

DECISION

Docket No. G-5999

In the Matter of
SATURN OIL & GAS COMPANY, INC.

UPON APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FILED PURSUANT TO SECTION 7 OF THE NATURAL GAS ACT AND MOTION TO DISMISS APPLICATION FOR WANT OF JURISDICTION IN THE COMMISSION

APPEARANCES

FOR SATURN OIL & GAS COMPANY, INC.
William H. Chamberlain, Esquire, Cheyenne, Wyoming
Chisman Hanes, Esquire, Washington, D. C.

FOR STAFF OF FEDERAL POWER COMMISSION
Orson L. Huntsman, Esquire, Washington, D. C.
E. B. Blackmon, Esquire, Washington, D. C.

KELLY, Presiding Examiner: This is a certificate case in which the Applicant, an independent producer, filed a "Compliance" with Commission Order No. 174-A, in which it challenged the jurisdiction of the Commission over its sales of natural gas at the wellhead to interstate pipeline companies.

Saturn Oil & Gas Company, Inc. (Saturn) filed with the Commission on November 26, 1954, a document entitled "Saturn Oil & Gas Company, Inc. Compliance with Federal Power Commission Order No. 174-A in so far as said Order relates to certificates of Public Convenience and Necessity." Saturn requests therein that the Commission find that it is not a natural-gas company within the meaning of the Natural Gas Act (Act) and is therefore "entitled to continue its business without securing a certificate

of public convenience and necessity." It is requested in the alternative that the Commission "issue conditionally a certificate of public convenience and necessity pending final determination by appropriate procedures as to whether or not applicant is a natural-gas company."

Notice of this application and its consolidation for hearing with numerous others of independent producers, and of a hearing in the consolidated proceedings to be held on May 7, 1956, was given by the Secretary on April 6, 1956, and duly published on April 12, 1956. The notice advised that if no protests or petitions to intervene were filed, the Commission might, after a non-contested hearing, dispose of the proceedings under the shortened procedure provided in the Commission Rules. The notice advised the Applicants that, under the procedure therein provided, it would be unnecessary for them to appear or be represented at the hearing unless further notified. There were no protests or objections to the issuance of a certificate filed in any of the consolidated dockets, and no appearances were entered at the hearing except by the Commission Staff and Saturn.

At the hearing on May 7, 1956 counsel for Saturn moved that its application be severed from the consolidated proceedings and be dismissed because Saturn's sales in this case, being all made at the wellhead, were not subject to the jurisdiction of the Commission under the Act. Saturn filed with the Commission on May 7, 1956 a written motion to dismiss its application on the basis of the facts set forth therein. On May 9, 1956 the Presiding Examiner referred to the Commission the motion to sever and dismiss Saturn's application. By order of the Commission of May 21, 1956, which granted the applications for certificates of public convenience and necessity of the other applicants in the consolidated proceedings, the application of Saturn was severed from the consolidated proceedings. By order of May 22, 1956 the Commission referred Saturn's motion to dismiss to the Presiding Examiner to be ruled upon as

a part of his initial decision submitted after the conclusion of the hearing and the completion of the record. The same order set the hearing of this matter for June 7, 1956, upon which date the hearing was completed. Opportunity was given to brief the question presented by the motion, and the final brief of Saturn was received July 23, 1956.

At the hearing on June 7, 1956 Saturn's President testified that he had prepared the application of Saturn filed with the Commission as a "Compliance" with Order No. 174-A and that the facts stated therein were true. His testimony shows that Saturn is a Kansas corporation which owns and operates natural-gas properties only in the State of Kansas. Its application here covers sales made from wells in the Hugoton Field, in which wells Saturn has varying interests, to Panhandle Eastern Pipe Line Company (Panhandle) and Northern Natural Gas Company (Northern), with neither of which has Saturn any affiliation or connection. All of its gas so sold is delivered at the wellhead pursuant to contract provisions. Saturn owns no facilities beyond its "Christmas tree" at each well, with the exception, in some instances, of a few inches of pipe between the "Christmas tree" and the meter of the purchasing company. In the other instances the meters are attached to the "Christmas tree." All meters are owned by the purchasers. As a part of Saturn's "Christmas trees" at these wells there is a valve by means of which the flow of gas from the well and into the purchaser's meter may be controlled. These valves are operated by the purchasers of the gas. Saturn owns no pipelines, no processing or manufacturing plants, and no other type of natural-gas facilities than those used in the production of its gas and the delivery thereof at the wellhead to Panhandle and Northern.

When delivery of the gas is made at the wellhead either to Panhandle or Northern, it is commingled with other gas in the pipelines of the purchaser which has been obtained from other wells in the Hugoton Field. A "substantial

majority" of this commingled gas is transported in the pipelines of these two purchasers beyond the boundaries of Kansas and into other states for resale.

In its written motion filed with the Commission Saturn "moves, on the basis of the facts set forth in its verified application, as amended, that said application be dismissed on the grounds that pursuant to the provisions of Section 1(b) of the Natural Gas Act, the applicant is not subject to the provisions of such Act." Saturn's brief first argues that its sales are not made in interstate commerce and that it is therefore not subject to the jurisdiction of the Commission under the Act. It contends that at the time of such sales its "gas has had no horizontal movement from the point of production, interstate or otherwise." It invokes the exemption of production and gathering by Section 1(b) of the Act, claiming that its sales are made "prior to the completion of production or gathering" and "are made at the wellhead, even prior to the commencement of gathering."

Saturn's natural gas is sold and delivered to purchasers who then transport a "substantial majority" thereof to other states for resale and ultimate public consumption. Saturn's sales are, therefore, made in interstate commerce, and Saturn is, therefore, a natural-gas company within the meaning of the Act. *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672; and *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682.

Saturn's brief asserts that the *Phillips* decision "is not inconsistent with the interpretation of the exclusionary provision of section 1(b) here advocated." It bases this contention upon certain differences between its natural gas business and that of Phillips. Saturn is a "small producer" while the Court called Phillips "a large integrated oil company"; and Phillips' operations are different from its own "in several significant respects:

"(1) Phillips' sales did *not* occur at the wellhead.

"(2) Phillips *processed* gas.

"(3) Phillips, in some instances, transported gas across state lines en route to the processing plants."

The Supreme Court said in the *Phillips* decision that "sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption." There is nothing in this decision which indicates in any way that the Court intended the word "producers", as used in the above quotation, to mean only such producers as were "large integrated oil companies" whose business operations were in all respects comparable to those of Phillips. The quotation above means, of course, that *any* "producer" making sales of natural gas which enters the interstate pipeline of the purchaser and is transported across a state line and resold for ultimate public consumption, is a natural-gas company subject to regulation under the Act, regardless of the point of delivery of the gas to the interstate pipeline company, and regardless of whether the gas is in its natural state or has been processed. This is made entirely clear by the further very broad statement in *Phillips* that "we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during or after transmission by an interstate pipeline company."

There is the further statement of the Court in *Phillips* that "we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems." A sale of natural gas for resale by an independent producer to an interstate pipeline company is no less a "wholesale" of natural gas because delivery of the gas is made at the wellhead instead of at the outlet pipe of a processing plant. Saturn has

for years made "wholesales" of natural gas to interstate pipeline companies. Saturn is a natural-gas company and its sales of natural gas are subject to the jurisdiction of the Commission under the Act. Saturn's motion to dismiss its application for a certificate of public convenience and necessity must, therefore, be denied.

The natural gas which is the subject of the application of Saturn here involved is all sold either to Panhandle or Northern under long-term sales contracts under which deliveries have been made at the wellhead to the purchasers for a good number of years. These deliveries continue to be made. Saturn has expressed no intention in this record of discontinuing these sales of natural gas from the more than forty wells in the Hugoton Field in which Saturn has varying percentages of ownership; and Saturn is, therefore, deemed to be able and willing properly to continue the sales and deliveries of natural gas here involved to Panhandle and Northern. It is in the public interest that these sales continue.

While challenging the jurisdiction of the Commission to regulate it, Saturn has complied with the law and regulations pending a determination of this jurisdictional question; and there is nothing in this record to indicate that Saturn is not able and willing properly to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder. A certificate of public convenience and necessity should issue authorizing the continuance of these sales of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission.

Additional Findings

Based upon the entire record in this proceeding the following additional findings and conclusions are made:

(1) Saturn is an independent producer of natural gas engaged in the sale of natural gas in interstate

commerce for resale for ultimate public consumption and, by reason thereof, is a "natural-gas company" within the meaning of the Natural Gas Act and subject to the jurisdiction of the Commission under the Act.

(2) Saturn's sales of natural gas to Panhandle and Northern are made in interstate commerce, and together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Saturn is able and willing properly to do the acts and to perform the service for which a certificate is applied for by it, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Saturn to Panhandle and Northern herein described, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

ORDER

WHEREFORE IT IS ORDERED, subject to the right of review by the Commission on appeal, or upon its own motion, as provided in its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued to Saturn Oil & Gas Company, Inc., upon the terms and conditions of this order, authorizing the sale by it to Panhandle Eastern Pipe Line Company and Northern Natural Gas Company of natural gas in interstate commerce

for resale, together with the continued operation of any facilities necessary therefor and subject to the jurisdiction of the Commission, all as more fully described in the record of this proceeding and the findings heretofore made.

(B) The certificate issued in Paragraph (A) shall be accepted in writing and under oath by Saturn Oil & Gas Company, Inc. within thirty days from the issuance of this order.

(C) The certificate herein granted is not transferable and shall be effective only as long as the Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the service herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicant. Further, the action taken in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(E) The motion of the Applicant, hereinbefore discussed, to dismiss its application is hereby denied.

DANIEL J. KELLY
Presiding Examiner

Filed: September 21, 1956
Issued: September 21, 1956

Order of Federal Power Commission Affirming Decision of Presiding Examiner

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G-5999

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck, William R. Connole and Arthur Kline.

In the Matter of
SATURN OIL & GAS COMPANY INC.

ORDER AFFIRMING DECISION OF PRESIDING EXAMINER

(Issued November 9, 1956)

The Presiding Examiner's Decision in this matter was issued on September 21, 1956. Thereafter Saturn Oil & Gas Company, Inc., requested and was granted time in which to file exceptions, and within the time allowed exceptions to the Examiner's Decision and the reasons therefor together with a brief in support thereof were filed on October 29, 1956.

The Commission *finds*:

(1) Upon consideration of the entire record in this matter, including oral and documentary evidence and the briefs filed before the Presiding Examiner, the decision of the Presiding Examiner and the exceptions thereto; the said decision of the Presiding Examiner herein issued on September 21, 1956, should be affirmed.

(2) The exceptions filed herein by the Applicant (Petitioner) to the Examiner's Decision should be denied.

The Commission *orders*:

(A) The Decision of the Presiding Examiner issued herein on September 21, 1956, be and is hereby

affirmed, and said decision shall become effective as the decision of the Commission as of the date of issuance of this order.

(B) The exceptions filed herein by the Saturn Oil & Gas Company Inc., to the Examiner's Decision be and each of them are denied.

By the Commission. Commissioner Digby concurring, subject to the statement attached.

LEON M. FUQUAY
Secretary.

DIGBY, Commissioner, *concurring:*

I concur in the order granting a certificate of public convenience and necessity to sell natural gas. I object to any reference in the order concerning the issuance of a certificate of public convenience and necessity for the facilities of the independent producer or gatherer of gas.

A certificate of public convenience and necessity is neither required nor properly issued for construction and operation of facilities of a producer or gatherer. The action of a majority of this Commission issuing a certificate for facilities is improper for it represents an assertion of power denied to us by Congress.

We have recognized the absence of power over facilities when, in Order No. 174 and Order No. 174-A, we failed to provide any procedure whereby application could be made for a certificate authorizing their construction and operation. We did promulgate procedural rules to enable filing of applications for certificates authorizing a sale or transportation. There was not even a suggestion that at some later time we would authorize or require authorization for construction and operation of facilities.

The action heretofore taken, insofar as it made no provision with respect to facilities, was wholly consistent with the declarations of the Supreme Court in *Federal Power*

Commission v. *Panhandle Eastern Pipe Line Company*, 337 U. S. 498, 505; *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U. S. 581, 598; *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682, 690-691, and *Phillips Petroleum Company* v. *State of Wisconsin*, 74 Sup. Ct. 794, 797-798. The language of the Court in these cases is clear and unambiguous. In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, *supra*, the Court stated that the "natural and clear meaning" of production or gathering contained in Section 1(b) of the Act encompassed "the producing properties and gathering facilities of a natural-gas company." In *Colorado Interstate Gas Co.* v. *Federal Power Commission*, *supra*, the Court stated that the production or gathering exemption applies to the "physical activities, facilities and properties used in the production and gathering of natural gas." In *Interstate Natural Gas Company* v. *Federal Power Commission*, *supra*, the Court stated that effect must be given to the exemption of producing and gathering, and indicated clearly that facilities, properties and activities of a producer and gatherer were exempted. The Court, in *Phillips Petroleum Company* v. *State of Wisconsin*, *supra*, held only that a sale in interstate commerce for resale was not within the exemption of Section 1(b). The discussion with respect to facilities and the recitation of the above-cited cases represents clear recognition of the intended scope and effect of the exemption as regards facilities.

The issue to be resolved is whether the Natural Gas Act requires that a certificate of public convenience and necessity issue for construction and operation of the facilities necessary to effect a sale by a producer or gatherer in interstate commerce for resale. The issue is not whether a sale of gas in interstate commerce for resale can be made without facilities. It cannot be doubted that facilities necessary to effect a sale of natural gas in interstate commerce are facilities used in interstate commerce. Recog-

nition of this fact cannot, however, create power in this Commission to issue, much less to require, certificates authorizing construction and operation of such facilities.

Statute and Regulations Involved

NATURAL GAS ACT, PUBLIC LAW No. 688, c. 556, 52 Stat. 821 (June 21, 1938), 15 U. S. C. 717-717w:

"Section 1. . . .

"(a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

"(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

"Section 2. . . .

"(6) 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

"(7) 'Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

"Section 7. . . .

". . .

"(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

"In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however*, That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

". . .

"(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, con-

struction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

18 C. F. R. PART 154, Rate Schedules and Tariffs.

". . .

"Section 154.91 *Applicability*—(a) *Definition.* An 'independent producer' as that term is used in this part means any person as defined in the Natural Gas Act who is engaged in the production or gathering of natural gas and who transports natural gas in interstate commerce or sells natural gas in interstate commerce for resale, but who is not primarily engaged in the operation of an interstate pipeline."

18 C. F. R. PART 157, Applications for Certificates of Public Convenience and Necessity Under Section 7 of the Natural Gas Act, As Amended.

". . .

"Section 157.23 *Applications for certificates of public convenience and necessity by independent producer.* (a) Every independent producer of natural gas as that term is defined in Section 154.91 of this chapter, who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission, and who has not heretofore obtained from the Commission a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, shall, on or before December 1, 1954, file with the Commission an application (original and 14 copies) in accordance with Sections 157.24 through 157.27. Independent producers whose sales of natural gas subject to the

jurisdiction of the Commission amount in the aggregate to less than 1,000,000 Mcf annually, may, in lieu of the foregoing, file by December 1, 1954 an application (original and five copies) containing the information called for by Exhibit A set forth below. Pending action by the Commission on an application hereunder, the service for which authorization is sought shall be continued.

"(b) No independent producer of natural gas shall, subsequent to the issuance of this part, engage in any new service with respect to the transportation of natural gas in interstate commerce or sale of such natural gas for resale in interstate commerce subject to the jurisdiction of the Commission without approval of the Commission, evidenced by a certificate of public convenience and necessity authorizing such transportation or sale upon application (original and 14 copies) pursuant to Sections 157.24 through 157.27. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission will amount in the aggregate to less than 1,000,000 Mcf annually may, in lieu of the foregoing, file an application (original and five copies) containing the information called for by Exhibit A set forth below. Where the economic feasibility of a new pipe line or important extension or expansion of an existing pipe line depends upon proof of an adequate gas supply, all related applications necessary to effectuate the service shall be filed within time to enable the Commission to consider all related matters concurrently."

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In the Supreme Court of the United States

October Term, 1957

SATURN OIL & GAS COMPANY, INC., PETITIONER

v.

FEDERAL POWER COMMISSION

On Petition for a Writ of Certiorari To the United States Court of Appeals for the Tenth Circuit

---

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

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OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (Pet. App. 1-a—16-a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on November 20, 1957. The petition for a writ of certiorari was filed on January 16, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether sales of natural gas in interstate commerce for resale made at the wellhead prior to the completion of gathering are subject to regulation by the Federal Power Commission under the Natural Gas Act.

STATUTE INVOLVED

Section 1(b) of the Natural Gas Act of June 21, 1938, 52 Stat. 821, 15 U.S.C. 717(b), provides:

> (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

STATEMENT

Petitioner, a small, unintegrated oil company, sought review in the court below of orders of the Federal Power Commission holding that its sales of natural gas are sales in interstate commerce for resale and that petitioner is therefore a "natural-gas company" within the meaning of Section 1(b) of the Natural Gas Act, *supra*. (Pet. App. 2-a). Petitioner owns and operates natural gas properties only within the State of Kansas; its wells produce a very dry gas, requiring neither processing nor dehydration,

and all of this gas is sold by petitioner at the wellhead to interstate pipeline companies for ultimate consumption by the public (Pet. App. 3-a). The "basic question" presented to the court below by the petition for review (Pet. App. 5-a) was "whether natural-gas sales at the wellhead by a small unintegrated company to an interstate pipeline company for resale for ultimate public consumption are controlled by the Natural Gas Act." The Court of Appeals held that they were. Rejecting petitioner's contention that its wellhead sales were within the language of Section 1(b) of the Act exempting from Commission jurisdiction "the production or gathering of natural gas," the court held that under the decision of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, the Federal Power Commission had jurisdiction of all sales by any producer of natural gas in interstate commerce for resale (Pet. App. 13-a—14-a).

ARGUMENT

1. Subsequent to the filing of the petition for a writ of certiorari in this case, the precise issue posed by the petition was definitively decided by this Court adversely to petitioner. *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, No. 85, this Term, decided January 20, 1958.[1]

Petitioner has expressly recognized (Pet. 16) that a determination in *Cities Service* upholding the ex-

[1] See, also, Nos. 86, 111-113, this Term, *Michigan Wisconsin Pipe Line Company, et al.* v. *Corporation Commission of the State of Oklahoma, et al.*, decided January 27, 1958, on the authority of the *Cities Service* case.

clusive jurisdiction of the Federal Power Commission to regulate wellhead sales of natural gas for resale in interstate commerce would control this case. The questions presented in the *Cities Service* case, as stated in the brief for the Federal Power Commission as *amicus curiae* urging reversal of the determination of the Supreme Court of Kansas, were as follows:

> 1. Whether sales of natural gas in interstate commerce for resale, made at the wellhead or prior to the completion of gathering, are subject to regulation by the Federal Power Commission under the Natural Gas Act.
>
> 2. Whether the State of Kansas can lawfully fix a minimum price at the wellhead to be charged for, or attributed to, natural gas where such gas is sold in interstate commerce for resale, either at the wellhead or after the completion of production and gathering.

The Court's *per curiam* opinion in *Cities Service*, reversing the Kansas Supreme Court, cited *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and *Natural Gas Pipeline Co.* v. *Panoma Corporation*, 349 U.S. 44. A plain element of the decision was the determination that wellhead sales of natural gas for resale in interstate commerce are subject to Commission regulation, thus disposing of the question presented in the petition here.

2. On January 27, 1958, the Court denied certiorari in two cases from the Fifth Circuit presenting the same issue as does this petition. *Shell Oil Company* v. *Federal Power Commission*, No. 449; *Humble Oil & Refining Co.* v. *Federal Power Commission*, No. 459.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
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